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REMARKS/ARGUMENTS

Claim 1 has been amended herewith to recite the glass transition temperature of the polymer particle. Basis is at page 9, lines 11-12. Claim 1 has also been amended to recite the viscosity of the composition while removing the "sodium sulfate sufficient to adjust" language (see below). Since the claimed composition is an aqueous dispersion, the "liquid . . . matrix" dispersion language has also been deleted as being redundant. It is submitted that the amendments are fully supported and entry is requested.

Rejections Under 35 USC 112

Claims 1 and 6-9 stand rejected under §112 for reasons of record at pages 2-3 of the Office Action. It is submitted that the amendment of Claim 1 regarding the viscosity term fully meets this rejection and withdrawal of the rejection is requested.

Rejections Under 35 USC 103

Claim 1 stands rejected under §103(a) over US 2003/0017125 in view of US5,866,110, for reasons of record at pages 3-4 of the Office Action.

Claims 1 and 6-9 stand rejected over US 2002/0058015 in view of US 2003/0017125 and further in view of US5,866,110, for reasons of record at pages 4-7 of the Office Action.

Applicants respectfully traverse all rejections, to the extent they may apply to the claims as now amended.

Controlling Case Law

Before turning to the specific grounds of rejection, it may be useful to consider three aspects of case law that would appear to be relevant to inventions of the present type under 35 USC §103.

As disclosed in the Specification at page 1, line 32 and page 2, line 8, the delivery of perfume "top note" materials to substrates is problematic. At page 13, lines 26-27, Applicants disclose that such "top notes" are materials having a Kovats Index of less than 1700 and preferably from about 1000 to about 1400 (page 8, line 29), as required by the claims now under consideration. Applicants solve this problem by means of the particles, as recited in Claim 1.

I. As the Examiner is aware, when making a rejection under 35 USC §103, the invention as a whole must be considered. MPEP 2141.02 I (case citations omitted). As will be discussed hereinafter, nothing in the cited documents evidences any appreciation of the problem being addressed by Applicants, let alone its solution. Indeed, the general term "perfume" used in the various cited documents does not necessarily imply the presence of perfume ingredients having the herein-claimed Kovats Index.

II. In regard to the various grounds of rejection, the Examiner often resorts to the principle of inherency. As the Examiner is aware, the law also requires that:

> Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *In re Robertson,* 49 USPQ2d 1949 (Fed. Cir. 1999).

Simply stated, since none of the "perfumes" of the cited documents is taught to contain ingredients having the requisite Kovats Index, it cannot be fairly stated that the various particulates disclosed therein would inherently have an affinity for such ingredients, especially in view of their glass transition temperatures (see below).

III. Inasmuch as the "inherency" of various aspects of the present invention has not been established, it is further submitted that a *prima facie* case of obviousness has not been established. Under MPEP 2142 the Examiner bears the burden of factually supporting any *prima facie* conclusion of obviousness. In determining the differences between the cited art and the claims, the question is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. See *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530 (Fed. Cir. 1983). Moreover, the cited references must teach or suggest all the claim limitations. See, for example, *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). If the Examiner does not prove a *prima facie* case of unpatentability, then without more, the Applicant is entitled to the grant of the patent. See in re *Oetiker, 977 F.2d 1443.* Applicants respectfully assert that the Office Action fails to meet all of these criteria, and thus fails to make a *prima facie* case of obviousness under 35 USC §103.

With regard to US 2003/0017125 in view of US5,866,110, the Examiner's attention is directed to the fact that the only glass transition temperature for the particles of US 2003/0017125 lies in the -100°C to about 15°C range; see [0050]. That range is far outside the glass transition temperature of the particles herein. Accordingly, it seems fair to say that, whatever the particles of US 2003/0017125 might be, they are not the same as the particles of the present invention. Accordingly, there is no basis for presuming that they would inherently function in the manner of the particles herein.

Moreover, the sole description of the benefit agent in the cited US 2003/0017125 document appears to be at [0053] – i.e., "perfumes". Nothing in that uninstructive term in any way suggests perfume ingredients having the herein-claimed Kovats Index, i.e., the "top note" materials that are key to the present invention.

Moreover, it is respectfully submitted that the US5,866,110 patent does not cure the aforesaid deficiencies in the primary document. Indeed, all US5,866,110 seems to be cited for is the use of sodium sulfate, which has now been removed as an element of the claim.

[In that regard, US 2003/0017125 was previously cited as 35 USC §102 art against the present invention. In response, the sodium sulfate was recited in the claims. Now, it is submitted that the claims fully meet 35 USC §102 over US 2003/0017125 in the recitation of the glass transition temperature and that the limitation to sodium sulfate is unnecessary. Accordingly, it has been removed by the present amendment.]

Net: Since the particles of the cited documents are not those of the present invention as evidenced by the fact that nothing in the cited documents suggests particles having a glass transition temperature as now claimed; and since the cited documents are silent as to the perfume "top note" ingredients, it is submitted that no *prima facie* case of obviousness has been made. Reconsideration and withdrawal of the rejection on this basis are requested.

With regard to US 2002/0058015 in view of US 2003/0017125 in further view of US5,866,110, the polymers of US 2002/0058015 appear to be quite different from those of the present invention, since they comprise a water-soluble polymer having water-insoluble particles of said polymer dispersed therein; see [0019]. Then, the active ingredient (which can be "fragrances"; see [0020]) is "dispersed in the polymeric composition by neutralization or chelation".

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With respect, it is submitted that nothing in US 2002/0058015 fairly suggests the glass transition temperature aspect of the present invention, nor the viscosity aspect, nor the association between the particles and the perfume materials having the claimed Kovats Index.

Moreover, to combine US 2002/0058015 with US 2003/0017125 in the manner suggested by the Examiner would lead to particles having the -100 to 15°C glass transition temperature. Under the controlling case law (cited above) relating to inherency, there is no reason in law or in logic to expect that such disparate particles would/could have the same beneficial effect on the top note perfume ingredients, in the manner of the present invention.

Again, the US5,866,110 patent adds nothing to the other cited disclosures, especially since sodium sulfate is no longer an element of the claims.

Net: It is submitted that the claims as now amended are not rendered *prima facie* obvious over this combination of documents. Withdrawal of the rejections on this basis is requested.

In light of the foregoing, early and favorable action in the case is requested.

Respectfully submitted,

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